

STATE OF MICHIGAN
COURT OF APPEALS

KIMBERLY WHITE,

Plaintiff-Appellant,

v

COHEN PODIATRY, P.C. and STANLEY B.
COHEN, D.P.M.,

Defendants-Appellees.

UNPUBLISHED

June 23, 2005

No. 261137

Wayne Circuit Court

LC No. 04-408036-NH

Before: O'Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

In this medical malpractice action, defendants moved for summary disposition pursuant to MCR 2.116(C)(7) and (8) on the basis that plaintiff's notice of intent to file suit and affidavit of merit were both deficient. The trial court granted the motion because it determined that plaintiff's notice was deficient in its statement of the applicable standard of care and the manner in which it was claimed that the standard was breached. MCL 600.2912b(4)(b) and (c). Plaintiff appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This case arose from a surgery to remove a heel spur from plaintiff's foot on June 10, 2002. On June 3, 2003, plaintiff filed a notice of intent,¹ which stated the following regarding the applicable standard of care:

**2. APPLICABLE STANDARD OF PRACTICE OR CARE
ALLEGED**

What a podiatrist of ordinary learning, judgment or skill would or would
not do under the same or similar circumstances.

With respect to identification of the manner that the standard was breached, plaintiff's notice stated:

¹ Plaintiff eventually filed her complaint and affidavit of merit on March 18, 2004.

3. THE MANNER IN WHICH IT IS CLAIMED THAT THE APPLICABLE STANDARD OF PRACTICE OR CARE WAS BREACHED

The podiatrist improperly performed removal of the heel spur and did not properly excise the spur removal of the left foot.

We agree with the trial court that the notice of intent was deficient. The purpose of the statutory requirements is to “notify[] potential malpractice defendants of the basis of the claims against them.” *Roberts v Mecosta Co Gen Hosp (After Remand)*, 470 Mich 679, 696 n 14; 684 NW2d 711 (2004). “[T]he claimant must make good-faith averments that provide details that are *responsive* to the information sought by the statute and that are as *particularized* as is consistent with the early notice stage of the proceedings.” *Id.*, at 701. A statement that a procedure was improperly performed does not identify *the manner* in which it is claimed that the standard of care was breached. MCL 600.2912b(4)(c).

In light of our resolution of this issue, we need not address plaintiff’s remaining arguments that address other potential bases for summary disposition in favor of defendants that were raised before, but not decided by, the trial court.

Affirmed.

/s/ Peter D. O’Connell
/s/ Bill Schuette